

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division

BRIGID S. MARTIN (CABN 231705)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
Telephone: (415) 436-7129
Facsimile: (415) 436-7234
Email: brigid.martin2@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL J. MINAHEN,

Defendant.

No. CR 07-0355 WHA

**UNITED STATES' SENTENCING
MEMORANDUM**

Court: Hon. William H. Alsup
Sentencing: September 11, 2007,
2:00 p.m.

The United States of America files this Sentencing Memorandum in support of its recommendation that this Court sentence Michael Minahen, Defendant in the above-captioned case, to a term of imprisonment at the middle of the Sentencing Guidelines range for Offense Level 21, Criminal History Category VI (range is 77-96 months), and restitution in the amount of \$3,040.00 pursuant to the Plea Agreement entered by the parties. U.S. Probation does not concur with the agreed upon term of imprisonment, but recommends a term of imprisonment at the low-end of the range for Offense Level 23, Criminal History Category VI (92 months).

INTRODUCTION

On June 4, 2007, United States Attorney filed an Information charging Defendant with two counts of unarmed bank robbery in violation of 18 U.S.C. § 2113(a). On June 19, 2007,

UNITED STATES' SENTENCING MEMORANDUM
CR 07-0355 WHA

1 Defendant pleaded guilty to both counts pursuant to a binding Plea Agreement under Fed. R. Cr.
2 P. 11(c)(1)(C). As set forth in the Plea Agreement, Defendant admitted to robbing two banks in
3 San Francisco – Bank of East Asia on April 17, 2007, and Guaranty Bank of California on May
4 1, 2007. (¶ 2) The parties further recognize in the Plea Agreement that during the April 17, 2007
5 robbery, even though Defendant did not have a gun, he held his hand in his pocket to make it
6 look like he had a gun and he stated to a bank teller, “Give me the money or I’ll shoot you.” (¶ 2)

7 The parties agree that an appropriate disposition in this case includes a term of imprisonment
8 at the middle of the range recommended for the Sentencing Guidelines Offense Level 21, 3 years
9 of supervised release, \$3,040.00 restitution, and a \$100 special assessment. (¶ 8) The parties
10 have agreed to be bound by the Criminal History Category as determined by the Court. (¶ 8)
11 According to the Plea Agreement, if the Court declines to accept these terms agreed upon by the
12 parties, Defendant and/or the government may withdraw from the Agreement. (¶ 6)

13 UNITED STATES SENTENCING GUIDELINES CALCULATIONS

14 The United States agrees with the accuracy of U.S. Probation’s Sentencing Guidelines
15 calculations and the calculation of Defendant’s Criminal History Category as set forth in the
16 Presentence Report (PSR). The government erred in its calculation of the Sentencing Guidelines
17 set forth in the Plea Agreement. The government neglected to add a 2-point enhancement to
18 Defendant’s offense level because Defendant made a threat of death during the April 17, 2007
19 bank robbery. U.S. Probation, however, correctly added the 2-point enhancement and thus
20 determined that the appropriate adjusted Offense Level is 23.

21 Despite the government’s inaccurate calculation of the Sentencing Guidelines, it stands by its
22 agreement with Defendant that a term of imprisonment at the middle of the range for Offense
23 Level 21 is appropriate. Other than this discrepancy, the parties’ agreement is in line with the
24 recommended sentence in the PSR.

25 CONCLUSION

26 For the foregoing reasons, the United States respectfully requests that the Court adopt the

27 //

28 //

1 sentence recommended by the parties in the June 19, 2007 Plea Agreement.

2
3 DATED: September 4, 2007

Respectfully Submitted,

4 SCOTT N. SCHOOLS
5 United States Attorney

6 /s/ Brigid S. Martin
7 BRIGID S. MARTIN
8 Special Assistant United States Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28